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SUBJECT: ICC PROSECUTOR MORENO-OCAMPO BRIEFS UNSC

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11. (SBU) SUMMARY: In his June 5 briefing to the Security Council, International Criminal Court (ICC) Prosecutor Luis Moreno-Ocampo stressed that the Government of Sudan (GoS) had not cooperated with the ICC, in contravention of its obligations under UNSC resolution 1593. Ocampo said he would not open a new investigation in the next six months. He also discussed his efforts to build cooperation with regional organizations including the African Union (AU) and Arab League. The Council divided along predictable lines regarding Article 16 deferral of the Bashir case. Council members called for the GoS to cooperate with the ICC and expressed continued concern for the effects of the GoS expulsion of 13 humanitarian NGOs. Libya criticized resolution 1593 as having been adopted in haste and Ocampo as preferring threats to cooperation. End Summary.

Ocampo Highlights

12. (SBU) International Criminal Court Chief Prosecutor Luis Moreno-Ocampo began his June 5 Security Council briefing with a chronology of the three investigations conducted pursuant to UNSCR 1593, and indicated that with respect to the first two investigations, the GoS had not cooperated with the ICC. Ocampo asserted that the Government of National Unity (GNU) had a responsibility to arrest President Bashir, and that the legal obligation to do so stemmed from the UN Charter and UNSC resolution 1593. He also said that the GoS designation of ICC indictee Ahmed Harun as Governor of South Kordofan contravened Council resolutions. Ocampo urged the Council and individual Member States of the UN to press consistently the GoS in bilateral and multilateral meetings to cooperate with the ICC. He reiterated that States Parties to the Rome Statute had an obligation to arrest any indictee traveling in their territory.

13. (SBU) Ocampo conveyed that while he would not open a new investigation in the next six months, he would continue reviewing information about ongoing crimes in three areas-- any decision affecting displaced persons, spillover of violence from Darfur into Chad, and the use of child soldiers. Ocampo also discussed ICC consultations with regional organizations-- naming the African Union (AU) and Arab League-- and referenced his trip to Doha in late May and support for the AU/UN mediation efforts. Ocampo stated that he had consulted several times with former South African President Mbeki, who chairs the AU High-Level Panel, and met with AU Peace and Security Council Chair Jean Ping on June 3, noting plans to meet Ping again in Addis Ababa.

Council Debate

14. (SBU) Ambassador Rice said that the GoS had clearly failed to meet its obligation to cooperate with the ICC. Rice stated that actions such as promoting Harun to Governor of South Kordofan were an affront to the Council. She called

attention to statements by Sudan's foreign minister that Sudan "had managed to ignore all UNSC resolutions with little repercussion" and that these resolutions "amounted to nothing but ink on paper." She challenged the Council to demonstrate that its resolutions were more than ink on paper. Ambassador Rice reiterated that the U.S. saw no reason to consider Article 16 deferral in this context.

¶15. (SBU) Mexico, the United Kingdom, Japan, Costa Rica, Austria, France, and Croatia expressed grave concern with the GoS failure to cooperate with the ICC and reiterated that Article 16 deferral of the case against Bashir was not warranted. These countries also expressed continuing concern with the humanitarian situation in Sudan resulting from expulsion of 13 humanitarian NGOs.

¶16. (SBU) In a strident, thirty-minute intervention, Libya asserted that two-thirds of UN member states are opposed to the ICC indictment of President Bashir. Libya quoted from statements by the Non-Aligned Movement, Arab League, UN/AU Joint Mediator Bassole, and SRSB Adada, that the indictment of Bashir undermined conflict resolution efforts. Libya said resolution 1593 was adopted in haste and has remained controversial. Libya was very critical of Ocampo, alleging that he seemed to believe that cooperation can be achieved by threats rather than calm dialogue.

¶17. (SBU) Uganda and Burkina Faso reiterated support for the AU position on deferral, and Vietnam and Russia observed that issuance of the arrest warrant against Bashir had adversely impacted the peace process. Neither China nor Turkey referred to Article 16.

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A Moderate Statement from China

¶18. (SBU) China focused on positive developments in the peace process, referencing the meeting of the P-5 and EU Special Envoys recently in Darfur as a constructive exchange of views. China observed an increasing level of support and recognition for the Doha process, led by joint UN/AU Mediator Bassole, and stressed the importance of the AU High Level Group in resolving the Darfur conflict. China highlighted the GoS cooperation that allowed UNAMID deployment to progress and noted that despite the humanitarian expulsions, the situation was improving and crisis had been averted "thanks to the restraint of the Sudanese government."

RICE